

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED FOOD AND COMMERCIAL WORKERS)
INTERNATIONAL UNION-INDUSTRY PENSION)
FUND and its Trustees: ANTHONY M. PERRONE,)
WILLIAM T. McDONOUGH, DAVID BLITZSTEIN,)
ROGER ROBINSON, KENNETH R. BOYD,)
BRIAN A. PETRONELLA, WALTER B. BLAKE,)
WILLIAM M. VAUGHN, III, RICHARD A. MANKA)
ROBERT J. FLACKE, STEPHEN T. BROWN,)
RICHARD D. COX)

P.O. Box 11102)
Chicago, Illinois 60611-0102)

Plaintiffs,)

v.)

MILES MANAGEMENT CORP.)
d/b/a Miles Supermarket)

4127 E 131st Street)
Cleveland, Ohio 44105)

Serve:)

Miles Management Corp.)
c/o Sal Onorato)
4127 E 131st Street)
Cleveland, Ohio 44105)

Defendant.)

FILED: JULY 8, 2008

08CV3866

JUDGE ZAGEL

MAGISTRATE JUDGE SCHENKIER

TG

Case No. _____

COMPLAINT

Plaintiffs, by counsel, hereby complain of Defendant as follows:

Jurisdiction and Venue

1. Jurisdiction of this Court arises pursuant to 28 U.S.C. §§ 1331 and 1337 (federal questions and commerce), Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132 (e)(1), and Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

Parties and Background

3. Plaintiff, United Food and Commercial Workers International Union-Industry Pension Fund (the "Fund"), is a multi-employer employee benefit plan within the meaning of Sections 3(3) and 3(37) of ERISA, 29 U.S.C. § 1002(3) and 1002(37).

4. Plaintiffs, Anthony M. Perrone, William T. McDonough, David S. Blitzstein, Brian A. Petronella, Roger Robinson, Kenneth R. Boyd, Walter B. Blake, William M. Vaughn, III, Stephen T. Brown, Robert J. Flacke, Richard A. Manka, and Richard D. Cox, are Trustees of the Fund. The Trustees are fiduciaries of the Fund within the meaning of Section 3(21) of ERISA, 29 U.S.C. §1002(21). The Fund is administered in Chicago, Illinois. The Trustees bring this action on behalf of the Fund and its participants and beneficiaries pursuant to Section 502 of ERISA, 29 U.S.C. § 1132, and Section 301 of the LMRA, 29 U.S.C. § 185.

5. Upon information and belief, Defendant, Miles Management Corp., d/b/a Miles Supermarket, is incorporated under the laws of the State of Ohio, and maintains a principal place of business at 4127 E 131st Street, Cleveland, Ohio, 44105.

6. Defendant and the United Food and Commercial Workers Union Local 880 are now, and have been at all times pertinent to this action, parties to one or more collective bargaining agreements ("Agreements") obligating Defendant to make monthly payments to the Fund for all employees covered by the Agreements.

7. In accordance with the Agreements and Declaration of Trust of the United Food and Commercial Workers International Union-Industry Pension Fund ("Trust Agreement") and policy of the Fund, the Fund's auditors conducted an audit of Defendant's payroll records to determine whether the appropriate contributions had been paid by Defendant to the Fund for this time period.

8. The audits revealed that Defendant did not remit accurate contribution reports for the period November 1, 2004 to April 1, 2006 and owed to the Fund the sum of \$4,780.11 in required contributions under the terms of the Agreement.

9. For the month of May 2008, the Defendant failed to pay the Fund the sum of \$764.15 in required contributions owed under the terms of the Agreement.

10. Liquidated damages of twenty percent (20%) of the delinquent amounts described in Paragraphs 8 and 9 are owed as required by ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2) in the total amount of \$1,108.85.

11. Interest on the unpaid contributions described in Paragraphs 8 and 9 is accruing from the dates due and continuing until payment is received.

12. Interest assessments are owed as a result of a late contribution payment for December 2007, January 2008 and March 2008 in the amount of \$15.00.

13. The Fund has demanded payment of the delinquent contributions, but the Defendant has not responded.

14. Defendant is indebted to the Fund in the minimum amount of \$6,668.11, plus interest at the rate of 2% over the prime rate of interest charged by the Fund's custodian bank, adjusted semiannually.

Count I

Violations of ERISA

15. Plaintiffs incorporate paragraphs 1 through 14 as if stated herein.

16. By the foregoing conduct, Defendant have violated Section 515 of ERISA, 29 U.S.C. § 1145.

WHEREFORE, Plaintiffs pray that the Court:

A. Order that Defendant pay to the Fund:

- (1) the sum of all delinquent payments;
- (2) interest on all amounts due, from the dates they became due and owing as required by Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2);
- (3) attorneys' fees and other costs and disbursements in this action as required by ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2);
- (4) the greater of interest on the delinquent amounts or liquidated damages of twenty percent (20%) of the delinquent amounts as required by ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2); and
- (5) additional amounts which may become delinquent during the pendency of this action or which become ascertainable based on the Fund's review of the Defendant's employment records.

B. Restrain and enjoin Defendant, their officers, agents, servants, attorneys, successors, assigns, and all persons acting on their behalf or in conjunction with them from:


(1) failing or refusing to pay to the Fund all amounts, including contributions, late fees, interest, liquidated damages and costs due to the Fund for which Defendant are obligated to make payments under the terms of a collective bargaining agreement;

C. Retain jurisdiction of this case pending compliance with its Orders;

D. Grant such other and further relief as the Court may deem just and proper.

Dated: July 8, 2008

Respectfully submitted,



Sherrie E. Voyles, Esq. (Bar No. 06242386)
Jacobs, Burns, Orlove, Stanton & Hernandez
122 South Michigan Avenue, Suite 1720
Chicago, IL 60603
(312) 327-3444

Jeffrey S. Endick, Esq. (Bar No. 4133661)
Christopher J. Schulte, Esq.
Slevin & Hart, P.C.
1625 Massachusetts Avenue, NW, Suite 450
Washington, D.C. 20036
(202) 797-8700

Counsel for Plaintiffs

A copy of this Complaint will be served upon the Secretary of Labor and the Secretary of the Treasury by certified mail, as required by Section 502(h) of ERISA, 29 U.S.C. § 1132(h).